CF0000061873

(CA 1066/97) Division Bench (Bilaspur) (2)

S. T. No. 154/96

APPEAL PRISONER

No. 629 Name पोथामी भीमा

Father's Name मुनेहर @ सुनेहर Resident ग्राम - करंजी, कोण्डी थाना - कोन्डागांव

Age 24 वर्ष Sentenced to आजन्म कारावास on 22/1/97

Under Section 302 भा० द० वि० by III Rd. A.S.J. Jagdalpur, Bastar

It is explained to the prisoner that if he states or wishes to be represented by a legal practitioner the Appellate Court will not proceed with the base for seven days unless the legal practitioner appears If the legal practitioner does not appear within seven days he may be heard at all if legal practitioner the court may proceed at once with the case and will not be obliged to give a bearing to any legal practitioner who should appear.

1. Date of application for copy of Judgement :- No.
2. Date of which copy received :- 22.1.97
3. Date on which appeal sent :- 5.2.97
4. Whether the prisoner wished to be represented or not :- ✓ Yes / ~~No.~~

No. 629 Name पोथामी भीमा S/o मुनेहर @ सुनेहर

Continued in जिला Jail प्रथम श्रेणी जगदलपुर

No. 543 / अपराध / Dated 5/2/97

Forwarded to the CHIEF JUDICIAL MAGISTRATE JAGDALPUR

together with a copy of Judgement or order passed in the case for favour of transmission to the proper Applleate Court.

अधीक्षक
जिला कारागृह एवं उपजेल
जगदलपुर

Superintendent, Central / Distt. / Sub-Jail.

Date of receipt in C. J. M. Office.

Date of receipt of record to accompany.

Memo of Appeal of the Appellate Court.

No. 3/4 dated 19.2.97

Forwarded to the श्रीमान् सत्र न्यायाधीश महोदय जगदलपुर

(डी.के. तिवारी) with this
मुख्य न्यायिक दण्डाधिकारी

C. R. MAGISTRATE जगदलपुर

Date of receipt in Applieate Court

XI-HC-78

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक Cr.A.No. 1066/97 ..... **सन् 200**

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

DIVISION BENCH:
HON'BLE MR. L.C. BHADOO &
HON'BLE MR. DHIRENDRA MISHRA, JJ

26.2.2007

Mr. R.K. Jain, Advocate for the appellant.

Mr. M.P.S. Bhatia, Panel Lawyer for the State.

Oral judgment dictated on Dais.

Per L.C. Bhadoo, J

This appeal is directed against the judgment of conviction and order of sentence dated 22.1.1997 passed by the 3rd Additional Sessions Judge, Jagdalpur in Sessions Trial No.154/94, whereby learned Additional Sessions Judge after holding the accused/appellant guilty for committing murder of Chaiturам, convicted him under Section 302 of the I.P.C. and sentenced to undergo rigorous imprisonment for life.

The prosecution case, in brief, is that on the date of incident i.e. on 8.3.1994 in between 8 to 9 a.m. Kotwar Sukudas (PW-1) was returning from Patel Para after making entries of birth & death. On the way, near the house of Kuldhar Muriya, Patel Chaitu (since deceased) met him, thereafter, on the demand of wine by Chaitu, he along with Chaitu went to the house of Kuldhar Muriya. When they were sitting in the veranda of Kuldhar, Aasmati (PW-2) informed them that there is no liquor, on which Chaitu demanded water. In the meantime, accused/appellant came and while abusing Chaitu had said that he has practiced witchcraft on his grandfather and assaulted Chaitu with the stone on

P.T.O.

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक ..... सन् 200

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश — 2 —	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

his head. Merg intimation (Ex.P-5) was given by Sukudas (PW-1), based on which First Information Report (Ex.P-17) was registered in the Police Station Kondagaon. After registering the case, the Station House Officer Shri Subhash Chand Choudhary left for the place of occurrence and after giving notice (Ex.P-7) to the Panchas, he prepared the inquest on the body of Chaitu. He took into possession the blood stained soil and plain soil from the place of occurrence under Ex.P-2. Stone, weapon of offence, was taken into possession under Ex.P-3. Dead body of Chaitu was sent for postmortem to the Primary Health Centre, Kondagaon, where Dr. S.K. Mahajan (PW-7) conducted the postmortem examination over the body of deceased on 9.3.1994 and prepared the postmortem report Ex.P-18. He noticed one peeled wound in the size of 4"x1"x1" on the left side of skull & one peeled wound in the size of 2"x1"x½" on the back side of head. He also noticed that bones were fractured and he reached to the conclusion that injuries were anti mortem and death was homicidal in nature. Clothes of deceased were taken into possession under Ex.P-11 & 12. Site plan (Ex.P-13) was prepared by the Investigating Officer.

After completion of investigation, charge sheet was filed against the accused/appellant in the Court of Judicial Magistrate First Class, Jagdalpur, who in turn committed the case to learned Sessions Judge, Jagdalpur from where learned 3rd Additional Sessions Judge, Jagdalpur received the case on transfer for trial.

The prosecution in order to establish the offence against the accused/appellant examined seven witnesses. Statement of accused/ appellant

P.T.O.

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक ..... सन् 200

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश —3—	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

was recorded under Section 313 of the Cr.P.C. in which he denied the material appearing against him in the prosecution evidence and stated that he is innocent and has been falsely implicated in the crime.

Learned Additional Sessions Judge after hearing the arguments of learned counsel for respective parties, convicted & sentenced the accused/appellant in the manner as aforementioned.

Learned counsel for the accused/appellant has not disputed the homicidal death of Chaitu. Moreover, the eyewitness Sukudas (PW-1),who is an independent person and witnessed the crime in question, has categorically stated that the accused attacked the deceased with the stone. This has been corroborated by the medical evidence of Dr. S.K. Mahajan (PW-7), who conducted the postmortem and stated that there were two injuries on the head of deceased as a result of which skull bone was fractured and the death was homicidal in nature. Therefore, it is established that the death of deceased was homicidal in nature.

As far as the involvement of accused/appellant in committing the crime in question is concerned, PW-1 Sukudas, who witnessed the crime in question, has stated that the accused assaulted the deceased with the stone as a result of which the deceased sustained two injuries on his head. To some extent, the evidence of this witness has been corroborated by PW-2 Aasmati, the same has also been corroborated by the medical evidence of Dr. S.K. Mahajan (PW-7) who has stated that there were peeled wounds on the head of deceased and skull bone was fractured. Therefore, in view of the above ocular and medical

(32)

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक ..... सन् 200

आदेश पत्रक (पूर्वानुबद्ध)

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evidence, it is established that the accused/appellant was the author of the crime in question.

Learned counsel for the accused/appellant argued that there is nothing on record to show that the accused/appellant assaulted the deceased with an intention to cause his death, therefore, the offence against the accused/appellant does not travel beyond Section 304 Part II of the IPC.

On the other hand, learned Panel Lawyer for the State supported the judgment of the trial court.

Having heard learned counsel for the parties, we have perused the record and perusal of records shows that PW-1 has stated in Para-2 of his examination-in-chief that accused attacked the deceased suspecting him to be witchcraft. As per prosecution case also, the grandfather of accused died and the accused was suspecting that deceased has practiced witchcraft as a result of which his grandfather died. Therefore, it appears that without having any intention to cause death of Chaitu, the accused in a fit of anger assaulted the deceased with the stone as a result of which the deceased received fatal injury on his head.

Therefore, in view of the above fact, we are of the considered opinion that the prosecution has failed to establish that the accused/appellant has attacked the deceased with an intention to cause her death. However, from the manner in which the accused attacked on vital part of the deceased, it can be safely inferred that when the accused attacked the deceased with the stone he had the definite knowledge that by attacking deceased with the stone, he may

P.T.O.

XI-HC-78

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक ..... सन् 200

आदेश पत्रक (पूर्वानुबद्ध)

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likely to cause his death. Therefore, the offence under Section 304 Part II of IPC is made out against the accused/appellant.

In the result, the appeal partly succeeds, the conviction and sentence imposed upon the accused/appellant under Section 302 of the IPC are hereby set aside and instead thereof, he is convicted under Section 304 Part II of the IPC and sentenced to undergo R.I. for ten years. As per judgment of the trial court, the accused/appellant is in detention since 10.03.1994, thereby he has already served the sentence imposed upon him, therefore, it is directed that the accused/appellant be set at liberty forthwith, if not required in any other case.

Sd/-
L.C. BHADOO
Judge

Sd/-
Dhirendra Mishra
Judge

Roshan/-